During the existence of the feudal system, all kinds of alienation by the feudatory were prohibited, because of their being contrary to the tenor of the grant. The tenant could not will or * de-
299 vise his land; or in any way encumber it with the payment of his debts; and hence a creditor who had recovered judgment against him, could not take it in execution for the satisfaction of his debt; so that, by the feudal law, lands were entirely exempted from being taken in execution, and sold for the satisfaction of the debts of the holder. The feudal restrictions upon voluntary alienations, were giving way before the general spirit of the times, when the Statute *De Donis* repeated what the law of tenures had before said, that the tenor of the grant should be observed; and this created that pernicious species of fettered inheritances called estates tail; which have also yielded to public utility; and have at length, in our country, been almost totally annihilated. The right of alienation by last will and testament, has been made absolute in almost all respects. *Taylor* v. *Horde*, 1 *Burr*, 115; June, 1773, ch. 1; November, 1782, ch. 23; *Newton* v. *Griffith*, 1 *H. & G.* 111.

The restrictions upon involuntarily alienation by attachment of law, have not been so entirely removed. The tenant may, in some cases, voluntarily alien his estate where it cannot be at all, or to a very limited extent, affected by an execution upon a judgment against him. As in the case of a mere empty legal estate, the trust of which is possessed by another; *Finch* v. *Winchelsea*, 1 *P. Will.* 278; *Forth* v. *Norfolk*, 4 *Mad.* 503; or in the instance of a tenant in tail, whose estate has been saved from the operation of the Act to Direct Descents; 1820, ch. 191; *Newton* v. *Griffith*, 1 *H. & G.* 129; who may, if he thinks proper, bar the intail in the manner allowed by the Act of Assembly, and alien the estate; June, 1773, ch. 1; November, 1782, ch. 23; yet if he neglects or refuses to dock the intail, and have it converted into a fee simple in himself, his creditor, who has obtained a judgment against him, can only take the estate during his life, in satisfaction of his debt; and after his death it will pass to the heir intail, entirely discharged from all the debts and incumbrances of the last tenant intail. *Paca* v. *Forwood*, 2 *H. & McH.* 175; *Ridgely* v. *McLaughlin*, 3 *H. & McH.* 220; *Laidler* v. *Young*, 2 *H. & J.* 69. Therefore, although a judicial lien can extend no farther, in any case, than the defendant's power of alienation; yet it is not in all respects co-extensive with it. But where the real estate is devisable by law, no disposition can be made of it to the prejudice of creditors; and therefore, it may be safely affirmed, that a judicial lien is, in most respects, commensurate with the legal right of testation. 3 & 4 W. & M. c. 14; 1 *Fonb.* 284; *Kinaston* v. *Clark*, 2 *Atk.* 204; *Hammond* v. *Gaither*, 3 *H. & McH.* 218.

*From all which these general principles seem to follow,
300 that, at common law, lands not being alienable by the feud-